

Christopher J. Workman (CA SBN: 156400)
Aaron M. Sibley (CA SBN: 299748)
LAW OFFICE OF CHRISTOPHER WORKMAN,
A Professional Corporation
110 Juniper Street
San Diego, CA 92101
Telephone: (619) 501-0808
Facsimile: (619) 501-2828
cworkman@thelocw.com
asibley@thelocw.com

Attorneys for Nathan and Jeniffer Eisenbise

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NATHAN EISENBISE and
JENIFFER EISENBISE,

Plaintiffs,

v.

CROWN EQUIPMENT
CORPORATION and CROWN
LIFT TRUCKS,

Defendants.

Case No.: 15-CV-0972-AJB (WVG)

FIRST AMENDED COMPLAINT
FOR DAMAGES

Judge: Hon. Anthony J. Battaglia
Courtroom: 3B

Mag. Judge: Hon. William V. Gallo
Courtroom: 2A

Demand for Jury Trial

Plaintiffs hereby demand a trial by jury and allege:

THE PARTIES

1. At all times relevant, plaintiff Nathan Eisenbise is, and at all relevant times was, an individual residing in San Diego County, in the State of California, and the lawful husband of Jeniffer Eisenbise.

1 2. At all times relevant, plaintiff Jeniffer Eisenbise is, and at all relevant
2 times was, an individual residing in San Diego County, in the State of California,
3 and the lawful wife of plaintiff Nathan Eisenbise.

4 3. Defendant, Crown Equipment Corporation is, and at all relevant times
5 was, a corporation incorporated and with its principal place of business in Ohio,
6 doing business in California under the fictitious name Crown Lift Trucks
7 (collectively “Defendant”).

8 **JURISDICTION AND VENUE**

9 4. This Court has diversity jurisdiction over this action under 28 U.S.C.
10 § 1332.

11 5. This Court has personal jurisdiction over all parties to this action,
12 because they conduct substantial business in this District, and some of the actions
13 giving rise to this Complaint took place in this District, and Defendants have
14 voluntarily appeared before this Court.

15 6. Venue is proper in this action under the 28 U.S.C. § 1391(b)(2)
16 because the incident and some of the acts giving rise to liability occurred in this
17 district.

18 ///

19 ///

20 ///

GENERAL FACTS

7. Defendant designs, manufactures, assembles, tests, markets, distributes, sells and maintains forklifts for use in occupied and narrow-isle warehouse environments where workers are working and customers are shopping.

9. The Lift is a compact, battery-powered vehicle that weighs approximately 8,000 pounds and travels at a speed of approximately 3 miles per hour. Fully loaded, the Lift can weigh up to 10,000-12,000 pounds which is three to four times heavier than a car. These remarkably heavy forklifts operate in areas in and around pedestrians.

1 11. The Lift operator stands sideways in a compartment at the rear of the
2 Lift. The Lift operator looks over her or his right shoulder to look toward the front
3 of the Lift and over her or his left shoulder to look to the rear the Lift. The Lift
4 was designed to be driven with the load/forks leading or with the load/forks
5 trailing. When the Lift is driven with the load/forks trailing, the exposed wheel is
6 at the leading edge of the Lift.

7 12. The direction (forward and backward) and speed of the Lift are
8 controlled by a joystick. The joystick can also be used to slow or stop the Lift
9 through a process called “plugging.” To stop the Lift by “plugging,” the Lift
10 operator moves the directional/speed control through neutral to the direction
11 opposite the current direction of travel. The farther the control is moved, the
12 quicker the Lift is supposed to slow down. The Lift will then move in the opposite
13 direction if the joystick is not moved to neutral when the Lift has come to a stop.

14 13. On February 14, 2013, plaintiff Nathan Eisenbise was working for a
15 Costco in La Mesa California. He was standing next to a stack of pallets while
16 counting them. As he looked up and to his left, he rotated his right leg and foot in
17 preparation to pivot and turn to his right to move to the next stack he intended to
18 count.

19 14. As plaintiff Nathan Eisenbise was counting the pallets, a coworker
20 was delivering a pallet of televisions to a Federal Express truck. The coworker had

1 placed the pallet on the truck and was backing away when he was momentarily
2 distracted by the driver of the Federal Express truck. During this momentary
3 distraction, he backed the Lift into the right side of plaintiff Nathan Eisenbise.

4 15. Plaintiff Nathan Eisenbise did not sense the approach of the Lift from
5 his right side until the slow moving Lift made contact with him. His instinctive
6 reaction and ability to pull his leg away from the slow moving Lift proved fruitless
7 because his foot was instantly pinned to the ground by the exposed and unprotected
8 rear wheel(s) of the Lift. When the Lift operator saw plaintiff Nathan Eisenbise,
9 he “plugged” the Lift to stop and reverse direction.

10 16. The exposed and unprotected wheel pinned, crushed and severed most
11 of plaintiff Nathan Eisenbise’s right foot. He wrenched to the ground and also
12 injured his back.

13 17. Plaintiff Nathan Eisenbise was taken to the hospital where he
14 remained for several weeks. He underwent several surgeries to repair and save his
15 right foot. Although the foot remained, it was not functional and it was prone to
16 infection. Ultimately, he underwent a below knee amputation of his lower right
17 leg. He continues to undergo follow-up medical care and therapy for his injuries.

18 ///

19 ///

20 ///

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0

2

3

4
5

6
7
8

9
0
1
2
3
4

5
6
7
8
9
0

1 to push off and/or pull away from the slow moving Lift avoiding all of the injuries
2 he sustained in the incident.

3 22. The Lift's design was defective because it did not provide the degree
4 of protection and safety an ordinary consumer would expect to protect a pedestrian
5 from the pinning and crushing rear wheel of the Lift when foreseeable contact and
6 accidents with pedestrians occur in the real world environment of the Lift's
7 expected use in warehouse areas with limited traffic controls and high pedestrian,
8 including customer, traffic.

9 23. The Lift's design, including but not limited to the opening in the rear
10 skirt exposing the pinning, crushing and dangerous rear wheel, caused harm to
11 plaintiff Nathan Eisenbise including but not limited to the severe injury to his right
12 foot resulting in the amputation of his right leg below his knee. Had the wheel not
13 been exposed or unprotected, the injuries suffered by plaintiff Nathan Eisenbise
14 would not have occurred. The risks of this design outweighed any benefits thereof.

15 24. Plaintiff Nathan Eisenbise is informed and believes and thereon
16 alleges that the Lift was defective in design when it left the control of Defendant.

17 25. As a direct, legal and proximate result of the design defects alleged
18 herein, plaintiff Nathan Eisenbise sustained serious and permanent injury to his
19 body, health, strength, and activity, including but not limited to partially severed
20 body parts, degloving of his right foot, amputation of his right foot, back injuries,

multiple contusions and abrasions, removal of skin from his body for graft surgeries, infections, and severe shock to his nervous system.

26. As a further direct, legal, and proximate result of the design defects alleged herein, and the injuries sustained by plaintiff Nathan Eisenbise as herein alleged, plaintiff Nathan Eisenbise was required and did employ physicians, surgeons, and other medical personnel and incurred expenses therefore, and incurred additional medical expenses for hospital bills and other incidental medical expenses, all to his further damage in an amount in excess of \$250,000 or be proven at time of trial.

27. As a further direct, legal, and proximate result of the design defects alleged herein, and the injuries sustained by plaintiff Nathan Eisenbise as herein alleged, plaintiff Nathan Eisenbise will be required to employ physicians, surgeons, and other medical personnel in the future and will incur expenses therefore including additional medical expenses for hospital bills, prosthetic devices, therapy, home modifications, vehicle modifications, and other incidental medical expenses all to his further damage in an amount in excess of \$1.2 million in present value to be proven at time of trial.

28. As a further direct, legal, and proximate result of the design defects alleged herein, plaintiff Nathan Eisenbise was prevented from attending his usual occupation as a manager at Costco and thereby lost earnings, benefits and other

1 income all to his further damage and in a sum of not less than \$150,000, to be
2 proven at time of trial.

3 29. Plaintiff Nathan Eisenbise is informed and believes, and thereon
4 alleges, that as a further direct, legal, and proximate result of the design defects
5 alleged herein, he will be prevented from attending his usual occupation at times in
6 the future and will thereby sustain future loss of earnings all to his further damage
7 in an amount in excess of \$500,000 to be proven at time of trial.

8 30. As a further direct, legal and proximate result of the design defects
9 alleged herein, plaintiff Nathan Eisenbise has experienced, among other past
10 general damages, excruciating pain, extreme suffering, emotional distress,
11 disfigurement, scaring, embarrassment, frustration, anxiety, and other injuries all to
12 his general damage in an amount not less than \$3 million to be proven at time of
13 trial.

14 31. As a further direct, legal and proximate result of the design defects
15 alleged herein, plaintiff Nathan Eisenbise will experience future general damages,
16 including but not limited to pain, suffering, emotional distress, ongoing
17 disfigurement and scaring, embarrassment, frustration, anxiety, and other injuries
18 all to his future general damage in an amount not less than \$3 million to be proven
19 at time of trial.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0

3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0

4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0

6
7
8
9
0
1
2
3
4
5
6
7
8
9
0

2
3
4
5
6
7
8
9
0

- 5
6
7
8
9
0

90

0

1 c. failing to install a guard, gate, bumper, or other protective device
2 preventing pedestrian body parts from accessing the exposed rear
3 wheel of the Lift;

4 d. such other and further particulars as the evidence may show.

5 35. As a direct, legal and proximate result of Defendant's breach of the
6 duty of care owed to plaintiff Nathan Eisenbise alleged herein, plaintiff Nathan
7 Eisenbise sustained serious and permanent injury to his body, health, strength, and
8 activity, including but not limited to partially severed body parts, degloving of his
9 right foot, amputation of his right foot, back injuries, multiple contusions and
10 abrasions, removal of skin from his body for graft surgeries, infections, and severe
11 shock to his nervous system.

12 36. As a further direct, legal, and proximate result of Defendant's breach
13 of the duty of care owed to plaintiff Nathan Eisenbise alleged herein, and the
14 injuries sustained by plaintiff Nathan Eisenbise as herein alleged, plaintiff Nathan
15 Eisenbise was required and did employ physicians, surgeons, and other medical
16 personnel and incurred expenses therefore, and incurred additional medical
17 expenses for hospital bills and other incidental medical expenses, all to his further
18 damage in an amount in excess of \$250,000 or to be proven at time of trial.

19 37. As a further direct, legal, and proximate result of Defendant's breach
20 of the duty of care owed to plaintiff Nathan Eisenbise alleged herein, and the

1 injuries sustained by plaintiff Nathan Eisenbise, plaintiff Nathan Eisenbise will be
2 required to employ physicians, surgeons, and other medical personnel in the future
3 and will incur expenses therefore, including additional medical expenses for
4 hospital bills, prosthetic devices, therapy, home modifications, vehicle
5 modifications, and other incidental medical expenses all to his further damage in
6 an amount in excess of \$1 million in present value to be proven at time of trial.

7 38. As a further direct, legal, and proximate result of Defendant's breach
8 of the duty of care owed to plaintiff Nathan Eisenbise alleged herein, plaintiff
9 Nathan Eisenbise was prevented from attending his usual occupation as a manager
10 at Costco and thereby lost earnings, benefits and other income all to his further
11 damage and in a sum of not less than \$150,000 or to be proven at time of trial.

12 39. Plaintiff Nathan Eisenbise is informed and believes, and thereon
13 alleges, that as a further direct, legal, and proximate result of Defendant's breach
14 of the duty of care owed to plaintiff Nathan Eisenbise alleged herein, plaintiff
15 Nathan Eisenbise will be prevented from attending his usual occupation at times in
16 the future and will thereby sustain future loss of earnings all to his further damage
17 in an amount in excess of \$50,000 to be proven at time of trial.

18 40. As a further direct, legal and proximate result of Defendant's breach
19 of the duty of care owed to plaintiff Nathan Eisenbise alleged herein, plaintiff
20 Nathan Eisenbise has experienced, among other past general damages, excruciating

1 pain, extreme suffering, emotional distress, disfigurement, scaring, embarrassment,
2 frustration, anxiety, and other injuries all to his general damage in an amount not
3 less than \$5 million to be proven at time of trial.

4 41. As a further direct, legal and proximate result of Defendant's breach
5 of the duty of care owed to plaintiff Nathan Eisenbise alleged herein, plaintiff
6 Nathan Eisenbise will experience future general damages, including but not limited
7 to pain, suffering, emotional distress, ongoing disfigurement and scaring,
8 embarrassment, frustration, anxiety, and other injuries all to his future general
9 damage in an amount not less than \$3 million to be proven at time of trial.

10 **THIRD CLAIM FOR RELIEF**

11 (Loss of Consortium)

12 (By Jeniffer Eisenbise against all Defendants)

13 42. As alleged in paragraphs 1 through 41 above, and incorporated herein
14 by reference, Defendant is liable in tort for the injuries to plaintiff Nathan
15 Eisenbise.

16 43. At all times relevant, plaintiffs Jeniffer Eisenbise and Nathan
17 Eisenbise were husband and wife.

18 44. Prior to the injuries alleged herein, plaintiff Nathan Eisenbise was
19 able to and did perform his duties as a spouse, including the performance of
20 household duties such as maintenance and management of the family home as well

1 as the provision of conjugal fellowship, love, affection, companionship, comfort
2 and sexual relations.

3 45. Subsequent to, and as a proximate result of the injuries alleged in this
4 action, plaintiff Nathan Eisenbise was no longer able to perform his duties as a
5 spouse, including the performance of household duties such as maintenance and
6 management of the family home as well as the provision of conjugal fellowship,
7 love, affection, companionship, comfort and sexual relations.

8 46. Plaintiff Nathan Eisenbise has and will continue to be unable to
9 perform his duties as a spouse in the future when his physical and mental injuries
10 limit his ability to do so, all to plaintiff Jennifer Eisenbise's damage in an amount
11 to be proven at time of trial.

12 **PRAYER**

13 WHEREFORE, plaintiffs Nathan Eisenbise demands a jury trial and prays
14 for judgment against defendants, and each of them, for:

- 15 1. Special damages in an amount of no less than \$2 million or according
16 to proof at time of trial;
- 17 2. General damages in an amount of no less than \$6 million or an
18 amount according to proof at time of trial;
- 19 3. Interest at the legal rate from the date of accrual of each item of
20 special damages;

1 4. Costs of Suit; and

2 5. Any further relief the court deems just and proper.

3 WHEREFORE, plaintiff Jeniffer Eisenbise demands a jury trial and prays
4 for judgment against Defendants, and each of them, for:

5 1. Special damages according to proof at time of trial;

6 2. General damages in an amount according to proof at time of trial;

7 3. Costs of Suit; and

8 4. Any further relief the court deems just and proper.

9 Dated: October 23, 2015

s/ Christopher J. Workman

**Attorneys for Plaintiffs Nathan and
Jeniffer Eisenbise**

Email: cworkman@thelocw.com